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No. 01-

IN THE

# Supreme Court of the United States

MISSOURI REPUBLICAN PARTY, *et al.*,

*Petitioners,*

*v.*

ROBERT F. CONNOR, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

The federal limit on political party coordinated expenditures in the Missouri 2002 general election is $603,576. The state limit on a party's combined cash and in-kind contributions is $23,350. The question presented is whether courts must make a case specific inquiry to determine the extent to which speech is suppressed by particular campaign finance regulations.

## PARTIES TO THE PROCEEDING

The petitioners are the Missouri Republican Party (a political party committee), Pierce for Auditor (a candidate committee), Charles A. Pierce, Marc Ellinger, Citizens for Eric Zahnd (a candidate committee), Eric Zahnd, and Lee R. Keith. Citizens to Elect Mike Reid (a candidate committee), Michael J. Reid, and Elaine Tschee Reid were parties to the original action. On March 1, 2002, the State of Missouri withdrew its claims against these three parties, and they are no longer parties to the proceeding.

The respondents are Robert F. Connor, in his official capacity as Executive Director of the Missouri Ethics Commission, Jeremiah W. Nixon, in his official capacity as Missouri Attorney General, and James E. Spain, Sandra Donahue, and Philip Conger, in their official capacities as Members of the Missouri Ethics Commission. Spain, Donahue, and Conger replaced Patricia Flood, Robert Gardner, and Richard Adams, who were members of the Missouri Ethics Commission when the suit was filed. Mike Greenwell, Donald Gann, Elaine Spielbusch were also members of the Missouri Ethics Commission when the suit was filed, but the terms of their offices have now expired. In March 2002, Robert F. Connor replaced Charles G. Lamb, who was the Executive Director of the Missouri Ethics Commission when the suit was filed.

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The Missouri Republican Party and two of its 1998 candidates respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit (Pet. App. A) is reported at 270 F.3d 567 (8th Cir. 2001). The court of appeals Order denying a petition for rehearing and for rehearing en banc (Pet. App. C) is not reported. This Court's Order (No. 01-A531) denying an application to stay the court of appeals mandate is not reported.

The initial decision of the court of appeals (Pet. App. B) is reported at 227 F.3d 1070 (8th Cir. 2000). This Court's Order granting Missouri's petition for certiorari, vacating the initial judgment, and remanding for consideration in light of *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*) is reported at 121 S. Ct. 2584 (2001).

The opinion of the district court is reported at 100 F. Supp. 2d 990. The district court's decision entering a preliminary injunction is reported at 31 F. Supp. 2d 1161, and its decision denying Missouri's motion to vacate the preliminary injunction is reported at 87 F. Supp. 2d 912. Petitioners have lodged copies of these district court decisions with the Court, and they are also set out in the appendix to Missouri's petition for a writ of certiorari to review the court of appeals initial judgment. *Jeremiah W. (Jay) Nixon v. Missouri Republican Party* (No. 00-1136) (Jan. 9, 2001).

## STATEMENT OF JURISDICTION

The court of appeals entered its judgment on November 2, 2001, and it denied a timely petition for rehearing and rehearing en banc on January 4, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment, as applied to the states through the Fourteenth Amendment:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const.: Amend. I.

This case also involves the Missouri statute limiting cash and in-kind contributions made by political parties to their candidates:

> Except as limited by this subsection, the amount of cash contributions, and a separate amount for the amount of in-kind contributions, made by or accepted from a political party committee in any one election shall not exceed the following:
>
> (1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, ten thousand dollars;

(2) To elect an individual to the office of state senator, five thousand dollars;

(3) To elect an individual to the office of state representative, two thousand five hundred dollars; and

(4) To elect an individual to any other office of an electoral district, ward or unit, ten times the allowable contribution limit for the office sought.

The amount of contributions which may be made by or accepted from a political party committee in the primary election to elect any candidate who is unopposed in such primary shall be fifty percent of the amount of the allowable contributions as determined in this subsection.

Mo. Rev. Stat. § 130.032.4.

## STATEMENT OF THE CASE

In the November 2002 statewide general election, the Missouri limit on a political party's cash contributions to a candidate is $11,675 and the limit on a party's in-kind (non-monetary) contributions is $11,675. Pet. App. D. In the 2002 statewide Missouri election for the United States Senate, the federal limit on party coordinated expenditures is $603,576. The court of appeals held that *Colorado II*, 533 U.S. 431, "establishes as a matter of law the constitutionality" of the Missouri party contribution limits and that "no predicate record-making by the state of Missouri is necessary before the validity of its statute can be established." Pet. App. A at 5a.

1. The Missouri Republican Party (MRP) is a political party committee organized under Missouri law. The party's goals are to take control of state government by electing its candidates and, in turn, to implement Republican policies and principles.

2. In 1996 Missouri imposed $250, $500, and $1000 limits on contributions made by individuals and political action committees (PACs) to candidates. Mo. Rev. Stat. § 130.032.1. The state also limited contributions made by a "political party committee" in support of its candidates on a sliding scale from $2500, to $5000, to $10,000. *Id.* § 130.032.4. Each even-numbered year, these contribution limits "shall be increased" to take inflation into account. *Id.* § 130.032.2.

3. The court of appeals enjoined enforcement of the individual and PAC limits on July 23, 1998. *Shrink Missouri Government PAC v. Adams*, 151 F.3d 763 (8th Cir. 1998). This injunction was in effect throughout the remainder of the 1998 general election and throughout 1999. After this Court upheld Missouri's $1075 limit on individual and PAC contributions on January 24, 2000 in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), the court of appeals lifted its injunction.

4. While the court of appeals' July 23, 1998 injunction was in effect and at the close of the 1998 general elections, the MRP contributed $133,500 to Charles Pierce (a Republican candidate for statewide office), $73,750 to Eric Zahnd (a Republican state senate candidate), and $8300 to Mike Reid (a Republican state house candidate). The MRP made these contributions to the three candidates because it had "targeted" their races — that is — the party believed that the election of Pierce, Zahnd, and Reid was critical to the party's

goal of taking control of the executive and legislative branches of government. If, for example, Zahnd and one more targeted Republican state senate candidate had both won their races, then the MRP would have gained control of the state senate for the first time in the last half of the twentieth century.

5. The MRP reported these contributions to the Missouri Ethics Commission (MEC). Given certain representations by the MEC, the party believed that there were no enforceable limits on party contributions in the November 1998 general elections and that its contributions to Pierce, Zahnd, and Reid were legal. The party also believed that enforcement of the party limits served no purpose while enforcement of the individual limits was enjoined. When the MRP made its contributions to Pierce, Zahnd, and Reid at the end of the 1998 general elections, there were no individual contribution limits that could have been circumvented by unlimited party contributions. Any individual or PAC could have made unlimited contributions directly to Pierce, Zahnd, and Reid. Response To Missouri's Application For Stay Pending Petition For Writ Of Certiorari (No. 00-A241) (Sept. 25, 2001) Exh. #1 (Affidavit Of John Hancock, Exec. Dir. Missouri Republican Party) ¶¶ 56, 62, 66; *see id.* at ¶¶ 45-75.

6. The MEC determined that state law prohibited the MRP from making cash payments of more than $10,750 to its statewide candidate, of more than $5375 to its state senate candidate, and of more than $2700 to its state house candidate. It claimed that the MRP was liable in the amount of $201,725 for "overlimit" contributions, that Pierce was liable in the amount of $126,500, that Zahnd was liable in the amount of $68,375, and that Reid was liable in the amount of $6600.

7. The MRP and its candidates Pierce, Zahnd, and Reid invoked the jurisdiction of the district court under 28 U.S.C. § 1331 to determine the validity of state limits on cash and in-kind contributions made by political parties to their candidates. Although the district court initially enjoined enforcement of the party limits, it granted the state's motion for summary judgment on June 22, 2000 and upheld the party limits. L-1.

8. On September 11, 2000, the court of appeals reversed the district court and held that Missouri's limits on a political party's cash and in-kind contributions to its candidates violate the First Amendment. Pet. App. B. It found that "the record is wholly devoid of any evidence that limiting parties' campaign contributions will either reduce corruption or measurably decrease the number of occasions on which limitations on individuals' campaign contributions are circumvented." *Id.* at 18a.

9. On June 25, 2001, this Court held that federal limits on a political party's coordinated expenditures are valid on their face. *Colorado II*, 533 U.S. 431.

10. On June 29, 2001, the Court granted Missouri's petition for certiorari, vacated the court of appeals' September 11, 2000 judgment, and remanded the case for consideration in light of *Colorado II*. 121 S. Ct. 2584 (2001). On remand, the court of appeals upheld the Missouri party contribution limits. Pet. App. A.

## REASONS FOR GRANTING THE WRIT

The court of appeals generic approval of party contribution limits — regardless of the amount of the limits or their effects — threatens significant erosion of First Amendment protection of political speech. Review of the court of appeals decision is necessary to ensure that the lower courts fulfill their constitutional responsibility to make a case specific determination that campaign finance regulations are closely drawn to achieve a sufficiently important interest. Review of the court of appeals decision will also prevent a significant miscarriage of justice.

### I. The Court of Appeals Decision Is Inconsistent With *Shrink Missouri* and *Lorillard Tobacco*

The court of appeals did not make a case specific inquiry whether the Missouri party limits are "closely drawn" to match a "sufficiently important" interest. *Colorado II*, 533 U.S. at 456; *Shrink Missouri*, 528 U.S. at 388; *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). Instead, it assumed, contrary to *Shrink Missouri*, that "the factual record developed in *Colorado II*," Pet. App. A at 4a, which would justify a $603,576 federal limit on coordinated expenditures, justifies state limits of $11,675 on a political party's cash and in-kind contributions. It also failed to determine the "[t]he degree to which speech is suppressed . . . under [the Missouri] regulatory scheme." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 563 (2001).

A. The court of appeals holding that *Colorado II* establishes as a matter of law the validity of the Missouri party limits is wrong. Pet. App. A at 5a. *Colorado II* did find that coordinated expenditures could be used to circumvent limits

on individual contributions and that government may limit party contributions to minimize circumvention of individual contribution limits. *Colorado II*, 533 U.S. at 465. The Court did not hold, however, that all party contribution limits are automatically valid. Indeed, it upheld federal limits on coordinated expenditures only on their face and not as applied. *Id.* at 456 n.17, 465.

Thus, even though coordinated expenditures "may be restricted to minimize circumvention of contribution limits," *id.* at 465, the court of appeals still had " 'an over-arching commitment' to make sure that [Missouri] has designed its statute to accomplish [this] purpose 'without imposing an unnecessarily great restriction on speech.'" *Reno v. American Civil Liberties Union*, 521 U.S. 844, 876 (1997) (*quoting Denver Area Ed. Telecommunications Consortium v. FCC*, 518 U.S. 727, 741 (1996)). The court of appeals, however, ignored its duty under *Shrink Missouri* and *Lorillard Tobacco* to make a case specific inquiry to determine the validity of the Missouri party limits.

B. In the 2002 general election for the United States Senate, the federal limit on party coordinated expenditures in Missouri is $603,576.[1] In the 2002 statewide general election,

1. The coordinated party expenditure limit for 2002 Senate nominees in Missouri is $301,788. Federal Election Commission, 28 RECORD 15 (March 2002). Both the national committee of a political party and the state committee can spend this sum, 11 C.F.R. § 110.7, and, as a result, the actual limit on the amount that a party can spend in the 2002 general election to support its Senate candidate is doubled to $603,576. The state committee and the national committee can designate a common agent for the purpose of spending their allotments. *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981).

the state limit on a political party's cash contribution is $11,675 and the limit on in-kind contributions is $11,675. Pet. App. D at 29a-30a. The federal limit is more than twenty-five times higher than the combined $23,350 state law limit on cash and in-kind party contributions.[2] It does not take a "scalpel" to probe this $580,000 difference between the federal and state limits. *Buckley*, 424 U.S. at 30.

The court of appeals, nonetheless, held that "the factual record developed in *Colorado II*" is sufficient under *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), to sustain the state limits on party contributions. Pet. App. A at 4a. As *Shrink Missouri* illustrates, the court of appeals erred in applying *Renton* to justify the state party contribution limits.[3] In *Shrink Missouri*, the state's $1075 limit on individual contributions was directly analogous to the $1000 federal limit upheld in *Buckley*. This Court permitted

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2. In a contested primary election for statewide office, a political party may make a cash contribution up to $11,675 and an in-kind contribution up to $11,675 to a candidate. In an uncontested primary, a party may make a cash contribution up to $5837.50 and an in-kind contribution up to the same amount. Pet. App. D at 29a-30a. Primary contributions and general election contributions are not fungible. Although the Missouri Republican Party does make contributions in some primary elections, the general election is the main event in the contest for control of state government, and contributions made long before any party has selected a standard bearer are not as effective as contributions made in the general election itself.

3. A question of government's evidentiary burden under *Renton* to justify restrictions on adult entertainment businesses, as opposed to restrictions on political speech, is now before the Court. *Alameda Books, Inc. v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000), *cert. granted*, 532 U.S. 902 (2001) (No. 00-799) (Argued December 4, 2001).

Missouri under *Renton* to rely on evidence before Congress, only as "substantiated" by Missouri's own evidence of harm in state elections. 528 U.S. at 393-94 & n.6. Here, however, the court of appeals excused Missouri from making any record to justify its party contribution limit. Pet. App. A at 5a ("no predicate record-making by the state of Missouri is necessary before the validity of its statute can be established").

If the Missouri limit on individual contributions at issue in *Shrink Missouri* had been only $40, or 1/25th of the $1000 federal limit, there is no reason to believe that this Court would have permitted the state to rely on evidence in *Buckley* about $1000 contributions in federal elections and excused Missouri from making any record to justify a $40 limit on individual contributions.

In this case, where the state limit on party contributions is about 1/25th of the federal coordinated expenditure limit, the court of appeals erred in permitting Missouri to rely solely on *Colorado II* and in tacitly speculating that political party contributions of $23,350 cause the same problems in state elections as coordinated expenditures of $603,576 in federal elections. This Court has "never accepted mere conjecture as adequate to carry a First Amendment burden." *Shrink Missouri*, 528 U.S. at 392; *City of Erie v. Pap's A.M.*, 529 U.S. 277, 312 (2000) (Souter, J., concurring in part and dissenting in part) (same); *see United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 822 (2000) (government "must present more than anecdote and supposition").

C. Even though the $603,576 federal limit on coordinated expenditures in Missouri is twenty-five times higher than

the combined $23,350 state limit on a party's cash and in-kind contributions, the court of appeals did not make a case specific determination of the extent to which the state regulations suppress political speech and association.

Without ever acknowledging the actual size of the federal limit on coordinated expenditures, the court of appeals simply characterized the Missouri party limits as "much lower." Pet. App. A at 5a. It then asserted that "[n]othing in this record would indicate" that the Missouri party limits are " 'so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless.'" *Id.* (*quoting Shrink Missouri*, 528 U.S. at 397).

Given the posture of case, there was no basis for the court of appeals assertion that the party limits are within the bounds set by *Shrink Missouri*. More importantly, this assertion does not satisfy the court's duty to determine "[t]he degree to which speech is suppressed . . . under a particular regulatory scheme." *Lorillard Tobacco*, 533 U.S. at 563 (*citing Renton*, 475 U.S. at 53-54).

1. The court of appeals assertion about the Missouri party limits ignores the fact that the record is not fully developed. The district court's decision to grant the state's motion for summary judgment cut short the development of the record. For example, Missouri produced a computer disk late in the course of discovery. *See* Missouri's Response To Second Request For Production (May 30, 2000). The disk contains comprehensive data for an eight year period from 1992 through 1999 about contributions made to the MRP and, in turn, made by the party to its candidates, and it comprises some 238 (11" by 17") printed pages. No court has ever examined this

political party contribution data in the light of *Colorado II*, or even for that matter *Shrink Missouri*, to determine the extent to which the party limits suppress political speech.

The court of appeals, moreover, never had any occasion to review completely the limited district court record. It held initially that the Missouri party limits were unconstitutional "on their face." Pet. App. B at 19a. It found that "the record is wholly devoid of any evidence that limiting parties' campaign contributions will either reduce corruption or measurably decrease the number of occasions on which limitations on individuals' campaign contributions are circumvented." *Id.* at 18a.

The court of appeals had no occasion to consider the effects of the party limits on the MRP. For example, it did not have to address the question whether the district court erred in applying *Shrink Missouri* to assess the effects of the party limits on *candidates* instead of assessing the effects of the party limits on *political parties*. *See* L-20 to L-23. Similarly, the court of appeals did not have to address the question whether the burdens imposed on the MRP have a systemwide effect of suppressing political advocacy under *Shrink Missouri*.[4]

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4. The appeal raised the question whether Missouri had demonstrated on its summary judgment motion that there were no genuine issues about the effects of the party limits on the MRP's ability to use primaries to field its best candidates, to recruit candidates with seed money, and to target financial support to candidates whose success is necessary to achieve the party's goal of taking control of state government. The MRP argued that all these burdens had a systemwide effect of suppressing political advocacy under *Shrink Missouri* because the very goals of a political party are systemwide – to take control of state government and implement party policies on a systemwide (statewide) basis.

On remand, the court of appeals ordered supplementary briefs and heard argument, but it never gave the MRP any opportunity to show that the state limits are radically different than the federal coordinated expenditure limits in their effects on political parties and on political speech and association.

2. Just as the degree to which speech is suppressed by a 1000 foot restriction on commercial advertising may vary in rural, suburban, and urban locations, the degree to which speech is suppressed by a $603,576 limit, as opposed to a $23,350 limit, may well be very different. *See Lorillard Tobacco*, 533 U.S. at 562-63.

At some point, limits on party contributions may be " 'so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless.' " *Shrink Missouri*, 528 U.S. at 397. Absent some case specific inquiry into effects of the combined $23,350 limit on cash and in-kind contributions, however, the court of appeals could not determine whether Missouri has crossed this First Amendment line.

## II. Generic Approval Of Campaign Finance Regulations Erodes First Amendment Rights

The court of appeals failure to make a case specific inquiry significantly and invisibly erodes important First Amendment rights.

A. Reading *Colorado II* as a generic approval of all party contribution limits, the court of appeals ignored the Court's warning that party contribution limits may be invalid as applied to expenditures that involve more of the party's own

speech than payment of a candidate's bills. *Colorado II*, 533 U.S. at 456 n.17; *see id.* at 469 n.2 (Thomas, J. dissenting). The court of appeals indiscriminately upheld state limits on in-kind contributions, as well as limits on cash contributions, even though in-kind contributions are primarily the party's own speech.

In-kind contributions, which state law defines interchangeably with in-kind expenditures, are primarily the party's own speech because the party controls completely the in-kind support that it provides to its candidates. *See* Mo. Rev. Stat. § 130.011(19) (defining an "in-kind contribution" or "in-kind expenditure" as "a contribution or expenditure in a form other than money"). In-kind contributions or expenditures made by the MRP to support its candidates include assistance in campaign and finance planning, access to voter and contributor lists, use of office facilities and office machines, research about the opposing party and its candidates, and the development and mailing of campaign literature setting forth the views of the party and its candidates.

The party's ability to provide this in-kind support for its candidates is a crucial component of the party's efforts to take control of state government. The party's expenditures to provide its candidates with in-kind support are critical to the party's ability to advocate its ideas effectively. In-kind expenditures are so important (and the burdens of precise accounting of services provided to a multitude of candidates are so substantial) that the state's two major political parties had an informal agreement for many years not to enforce the limits on in-kind contributions.

Although the court of appeals initially held that state law limits on in-kind contributions, as well as on cash contributions, were unconstitutional, Pet. App. B at 18a-19a, it did not make this distinction on remand. Its decision upholding limits on in-kind contributions and expenditures will have a substantial — but never considered — effect on party expenditures that are more the party's own speech than the payment of its candidates' bills.

B. Reading *Colorado II* as a generic approval of all party contribution limits, the court of appeals ignored the actual effects of the cash and in-kind limits on the Missouri Republican Party's ability to compete for control of state government and to implement Republican policies.

The MRP, like all political parties, "targets" its financial support to candidates who have a chance of winning races that will help the party achieve its objective of capturing control of the state legislature. The importance of "targeting" party support (cash and in-kind) is demonstrated by the fact that a switch of about 3,000 votes in key legislative districts would have permitted the MRP in 1996 to win a majority in the Missouri house and senate for the first time in almost fifty years. The party contribution limits will have a severe effect on the MRP's ability to "target" its financial support in future elections because in every single targeted race from 1988 to 2001 with the exception of 1996 (when the limits were in effect), the MRP's support for targeted Republican candidates far surpassed the limits. *See* Response To Missouri's Application For Stay Pending Petition For Writ Of Certiorari (No. 00-A241) (Sept. 25, 2001) Exh. #1 (Affidavit Of John Hancock, Exec. Dir. Missouri Republican Party) ¶32.

The court of appeals did not consider the effects of the combined $23,350 limit on cash and in-kind contributions. The erosion of political parties' First Amendment interests in competing for control of state government is the unexamined byproduct of a generic approval of party contribution limits.

## III. A Case Specific Inquiry Is Necessary To Prevent A Significant Miscarriage of Justice

In *Colorado II*, the Court expressly recognized that the federal limits on coordinated expenditures, while valid on their face, might nonetheless be invalid as applied. 533 U.S. at 456 n.17. On remand, however, the court of appeals did not distinguish between the validity of the party limits on their face and the validity of the limits as applied to the MRP and three of its candidates in the 1998 general elections. *See* Pet. App. A.

The court of appeals failure to make a case specific determination of the validity of the Missouri party limits as applied in the November 1998 general election raises a question of exceptional importance: whether a state may impose severe sanctions on political speech and association where, as Missouri has conceded, enforcement of campaign contribution limits serves no valid purpose.

A. Government may impose campaign contribution limits only if it has a "sufficiently important" interest. *Colorado II*, 533 U.S. at 456; *Shrink Missouri*, 528 U.S. at 388; *Buckley*, 424 U.S. at 25. Under *Colorado II*, preventing circumvention of individual and PAC contribution limits is the only interest

"sufficiently important" to justify Missouri's party limits.[5] Missouri, however, had no interest in preventing circumvention of individual or PAC contribution limits in November 1998.

The court of appeals had enjoined enforcement of the state's individual contribution limits on July 23, 1998. *Shrink Missouri Government PAC v. Adams*, 151 F.3d 763 (8th Cir. 1998). When the MRP made the disputed contributions to Pierce, Zahnd, and Reid in the 1998 general elections, the state had no reason to enforce the party limits. There were no individual contribution limits that could have been circumvented by the party's contributions. Any individual or PAC could have contributed unlimited sums to any candidate without using a political party as an intermediary.[6]

5. In *Colorado II*, the Court upheld federal limits on coordinated expenditures solely on the ground of "minimiz[ing] circumvention of contribution limits." 533 U.S. at 465. It expressly declined to reach any argument that limits on coordinated expenditures could be "justified by a concern with *quid pro quo* arrangements and similar corrupting relationships between candidates and parties themselves." *Id.* at 456 n.18. Thus, any suggestion that the Missouri party limits prevent corruption finds no warrant in *Colorado II*. Any suggestion that the Missouri party limits prevent corruption is also inconsistent with the record. The court of appeals specifically found, in its first opinion, that "the record is wholly devoid of any evidence that limiting parties' campaign contributions will either reduce corruption or measurably decrease the number of occasions on which limitations on individuals' campaign contributions are circumvented." Pet. App. B at 18a. Indeed, as a member of the panel observed in the first opinion, Missouri did not even attempt to justify the party limits on the ground that a political party's contributions to its candidates cause corruption or create the appearance of corruption. *Id.* at 24a-25a & n.1 (Gibson, J. concurring & dissenting)). Missouri argued only that "the [party] limits deter evasion of individual contribution limits." *Id.* at 25a.

6. The court of appeals did observe, in the course of addressing a due process issue, that "[t]he fact that we had declared [individual (Cont'd)

As the district court held, the party limits served no purpose after the limits on individual contributions had been enjoined. L-50 (district court holding that "one of the purported objectives" of the party limits to "thwart[] a person from evading the limit on the amount that he or she can legitimately give to a given candidate . . . ceased to have any force whatsoever" when enforcement of the individual limits was enjoined).

Indeed, Missouri has conceded that it had no reason to enforce the party limits while the individual limits were enjoined in 1998:

> Defendants, all state officials, consented to [district court's January 13, 1999 preliminary injunction barring enforcement of the party limits] because the limits on party committee contributions could have little effect so long as individuals and non-party committees could contribute unlimited amounts directly to candidates."

Missouri's Opp. to Motion for Injunction Pending Appeal (July 14, 2000) at 2.

B. Even though Missouri had no reason to limit contributions made by political parties to their candidates in the November

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(Cont'd)

and PAC] limits unconstitutional had no bearing on the efficacy of the limits on parties and no effect on the MEC's right and duty to enforce those limits." Pet. App. A at 7a. This observation begs the critical point that there were no individual or PAC limits to be circumvented by the MRP's 1998 contributions and, consequently, enforcement of the party limits could not serve any valid state interest.

1998 general election (when enforcement of the individual limits was enjoined), the state is now attempting to hold Pierce personally liable to repay a $126,750 contribution made by the MRP and to hold Zahnd personally liable to repay a $68,375 party contribution.

The candidates spent their party's contributions in good faith in their campaigns, and their campaign committee treasuries were empty or near empty when the MEC initiated enforcement in the closing days of the November 1998 general election. Imposition of these individually severe fines for political activity that occurred while enforcement of individual and PAC contribution limits was enjoined would serve no legitimate state purpose. In the November 1998 general election, any individual or PAC could have contributed $126,750 directly to Pierce or $68,375 directly to Zahnd and would have had no reason to channel a contribution through a political party.

Review of the court of appeals decision would permit the Court to correct a significant miscarriage of injustice: the imposition of substantial sanctions on political candidates where, as the state has conceded, enforcement of party contribution limits serves no valid purpose.

## CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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